

**Introduced by Senator Kehoe**

February 18, 2005

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An act to amend Section 6389 of the Family Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 585, as amended, Kehoe. Protective orders: firearms.

Existing law provides that the form for a protective order notify the respondent that he or she shall be ordered to relinquish possession and control of any firearms. Existing law also provides that the court shall order that relinquishment, as specified, within 24 hours of being served the order, and require the respondent to notify the court of the relinquishment within 72 hours.

This bill would revise the protective order form ~~to notify the respondent that he or she shall be ordered to relinquish possession and control of any firearms immediately, rather than within 24 hours, and to include a place for the requestor to specify the types of space for the petitioner to identify all firearms that are present and their possible location~~ *known to be in the possession of the respondent, the location of the firearms, the basis for the petitioner's knowledge regarding the existence and location of the firearms, and why the respondent's possession of firearms subjects the petitioner to an increased risk of harm.* The bill would also require the respondent to notify the court of the relinquishment within 48 rather than 72 hours, and would ~~provide that upon a showing of probable cause, the family court may order a law enforcement officer to serve the protective order and issue a warrant for the search and seizure of any firearm in the possession of the respondent~~ *require the court, upon issuance of a protective order, to order the respondent to relinquish any firearm in that person's*

*control to local law enforcement officials or a licensed gun dealer, within 24 hours of being served with the order, and to issue a search warrant for the immediate search and seizure of any firearm in the respondent's possession upon a judicial finding of probable cause that the respondent's possession of firearms creates an increased risk of harm to the petitioner and that specified firearms will be found a specified location. The bill would also set forth additional procedures for surrendering a firearm to a peace officer.*

By requiring new duties of law enforcement, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 6389 of the Family Code is amended to
- 2 read:
- 3 6389. (a) A person subject to a protective order, as defined in
- 4 Section 6218, shall not own, possess, purchase, or receive a
- 5 firearm while that protective order is in effect. Every person who
- 6 owns, possesses, purchases or receives, or attempts to purchase
- 7 or receive a firearm while the protective order is in effect is
- 8 punishable pursuant to subdivision (g) of Section 12021 of the
- 9 Penal Code.
- 10 (b) (1) On all forms providing notice that a protective order
- 11 has been requested or granted, the Judicial Council, shall include
- 12 a notice that, upon service of the order, the respondent shall be
- 13 ordered to relinquish possession or control of any firearms
- 14 ~~immediately~~ and not to purchase or receive or attempt to
- 15 purchase or receive any firearms for a period not to exceed the
- 16 duration of the restraining order.

~~(2) Each form shall include a place for the requestor to specify the types of firearms that are present and their possible location.~~

*(2) Each form shall include a space for the petitioner to identify all firearms known to be in the possession of the respondent, the location of the firearms, the basis for the petitioner's knowledge regarding the existence and location of the firearms, and why the respondent's possession of firearms subjects the petitioner to an increased risk of harm.*

~~(c) (1) Upon issuance of a protective order, as defined in Section 6218, the court shall order the respondent to relinquish immediately any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control by either surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Section 12071 of the Penal Code. Upon a showing of probable cause, the family court may order a law enforcement officer to serve the protective order and issue a warrant for the search and seizure of any firearm in the possession of the respondent. A person ordered to relinquish any firearm pursuant~~ *control pursuant to this subdivision:*

*(A) The court shall order that the respondent surrender the firearm to the control of local law enforcement officials or sell the firearm to a licensed gun dealer, as specified in Section 12071 of the Penal Code, within 24 hours of being served with the order.*

*(B) A judge may issue a search warrant for the immediate search and seizure of any firearm in the possession of the respondent upon a judicial finding of probable cause that the respondent's possession of firearms creates an increased risk of harm to the petitioner, and that specified firearms will be found in a specified location.*

*(C) In the event that a subordinate judicial officer reviews the petition, that judicial officer may refer the matter to a judge for review and possible issuance of a warrant, as provided for in paragraph (2).*

*(D) A peace officer serving the order may, upon recommendation of a judicial officer or in his or her own discretion, request the immediate surrender of any firearm in the possession of the respondent and may use any lawful means to facilitate this surrender.*

1 (2) A person ordered to relinquish any firearm pursuant to this  
2 subdivision shall, *within 48 hours after receiving the order*, file  
3 with the court a receipt showing the firearm was surrendered to  
4 the local law enforcement agency or sold to a licensed gun dealer  
5 ~~within 48 hours after receiving the order.~~

6 ~~(d) If the respondent declines to relinquish possession of any~~  
7 ~~firearm based upon the assertion of the right against~~  
8 ~~self-incrimination, as provided by the Fifth Amendment to the~~  
9 ~~United States Constitution and Section 15 of Article I of the~~  
10 ~~California Constitution, the court may grant use immunity for the~~  
11 ~~act of relinquishing the firearm required under this section.~~

12 ~~(e)~~  
13 (d) A local law enforcement agency may charge the  
14 respondent a fee for the storage of any firearm pursuant to this  
15 section. This fee shall not exceed the actual cost incurred by the  
16 local law enforcement agency for the storage of the firearm. For  
17 purposes of this subdivision, “actual cost” means expenses  
18 directly related to taking possession of a firearm, storing the  
19 firearm, and surrendering possession of the firearm to a licensed  
20 dealer as defined in Section 12071 of the Penal Code or to the  
21 respondent.

22 ~~(f)~~  
23 (e) The restraining order requiring a person to relinquish a  
24 firearm pursuant to subdivision (c) shall state on its face that the  
25 respondent is prohibited from owning, possessing, purchasing, or  
26 receiving a firearm while the protective order is in effect and that  
27 the firearm shall be relinquished to the local law enforcement  
28 agency for that jurisdiction or sold to a licensed gun dealer, and  
29 that proof of surrender or sale shall be filed with the court within  
30 a specified period of receipt of the order. The order shall also  
31 state on its face the expiration date for relinquishment. Nothing  
32 in this section shall limit a respondent’s right under existing law  
33 to petition the court at a later date for modification of the order.

34 ~~(g)~~  
35 (f) The restraining order requiring a person to relinquish a  
36 firearm pursuant to subdivision (c) shall prohibit the person from  
37 possessing or controlling any firearm for the duration of the  
38 order. At the expiration of the order, the local law enforcement  
39 agency shall return possession of any surrendered firearm to the  
40 respondent, within five days after the expiration of the

1 relinquishment order, unless the local law enforcement agency  
2 determines that (1) the firearm has been stolen, (2) the  
3 respondent is prohibited from possessing a firearm because the  
4 respondent is in any prohibited class for the possession of  
5 firearms, as defined in Sections 12021 and 12021.1 of the Penal  
6 Code and Sections 8100 and 8103 of the Welfare and Institutions  
7 Code, or (3) another successive restraining order is used against  
8 the respondent under this section. If the local law enforcement  
9 agency determines that the respondent is the legal owner of any  
10 firearm deposited with the local law enforcement agency and is  
11 prohibited from possessing any firearm, the respondent shall be  
12 entitled to sell or transfer the firearm to a licensed dealer as  
13 defined in Section 12071 of the Penal Code. If the firearm has  
14 been stolen, the firearm shall be restored to the lawful owner  
15 upon his or her identification of the firearm and proof of  
16 ownership.

17 ~~(h)~~

18 (g) The court may, as part of the relinquishment order, grant  
19 an exemption from the relinquishment requirements of this  
20 section for a particular firearm if the respondent can show that a  
21 particular firearm is necessary as a condition of continued  
22 employment and that the current employer is unable to reassign  
23 the respondent to another position where a firearm is  
24 unnecessary. If an exemption is granted pursuant to this  
25 subdivision, the order shall provide that the firearm shall be in  
26 the physical possession of the respondent only during scheduled  
27 work hours and during travel to and from his or her place of  
28 employment. In any case involving a peace officer who as a  
29 condition of employment and whose personal safety depends on  
30 the ability to carry a firearm, a court may allow the peace officer  
31 to continue to carry a firearm, either on duty or off duty, if the  
32 court finds by a preponderance of the evidence that the officer  
33 does not pose a threat of harm. Prior to making this finding, the  
34 court shall require a mandatory psychological evaluation of the  
35 peace officer and may require the peace officer to enter into  
36 counseling or other remedial treatment program to deal with any  
37 propensity for domestic violence.

38 ~~(i)~~

39 (h) During the period of the relinquishment order, a  
40 respondent is entitled to make one sale of all firearms that are in

1 the possession of a local law enforcement agency pursuant to this  
2 section. A licensed gun dealer, who presents a local law  
3 enforcement agency with a bill of sale indicating that all firearms  
4 owned by the respondent that are in the possession of the local  
5 law enforcement agency have been sold by the respondent to the  
6 licensed gun dealer, shall be given possession of those firearms,  
7 at the location where a respondent's firearms are stored, within  
8 five days of presenting the local law enforcement agency with a  
9 bill of sale.

10 ~~(j)~~

11 (i) The disposition of any unclaimed property under this  
12 section shall be made pursuant to Section 1413 of the Penal  
13 Code.

14 ~~(k)~~

15 (j) The return of a firearm to any person pursuant to  
16 subdivision ~~(g)~~ (f) shall not be subject to the requirements of  
17 subdivision (d) of Section 12072 of the Penal Code.

18 ~~(l)~~

19 (k) If the respondent notifies the court that he or she owns a  
20 firearm that is not in his or her immediate possession, the court  
21 may limit the order to exclude that firearm if the judge is  
22 satisfied the respondent is unable to gain access to that firearm  
23 while the protective order is in effect.

24 ~~(m)~~

25 (l) Any respondent to a protective order who violates any  
26 order issued pursuant to this section shall be punished under the  
27 provisions of subdivision (g) of Section 12021 of the Penal Code.

28 SEC. 2. If the Commission on State Mandates determines that  
29 this act contains costs mandated by the state, reimbursement to  
30 local agencies and school districts for those costs shall be made  
31 pursuant to Part 7 (commencing with Section 17500) of Division  
32 4 of Title 2 of the Government Code.